CONTRACT #7 RFS # 328.01-301 FA # 05-16159-05

# Tennessee Wildlife Resources Agency (TWRA)

VENDOR: The Active Network, Inc.



Memorandum

#### TENNESSEE WILDLIFE RESOURCES AGENCY

**ELLINGTON AGRICULTURAL CENTER** P.O. BOX 40747 NASHVILLE, TENNESSEE 37204

RECEIVED

MAR 1 9 2009

FISCAL REVIEW

Leni Chick

Nat Johnson, Assistant Director Tennessee Wildlife Resources Agency

Contract # FA-05-16159-04 Non-Competitive Amendment R e q u e s t

DATE: March 16, 2009

Attached is a Non-Competitive Amendment Request for consideration by the Fiscal Review Committee for Contract FA-05-16159-04, which resulted from the RFP process pursuant to RFP-328.01-301. Tennessee Wildlife Resources agency respectfully requests consideration of this request. The purpose of this non-competitive amendment of FA-05-16159-04 to effect a contract extension for our current R.E.A.L. system from five years to six years and to modify the maximum liability commensurate for that extension.

The Tennessee Wildlife Resources Agency recently published a Request for Proposals (RFP# 328.01-698) which resulted in one proposal, which was felt to be at excessive cost. The agency has requested that this RFP be cancelled and has plans to submit another RFP which the agency feels should result in a reasonable contract within budget limitations.

Should the RFP result in a contract with a vendor other than the current contractor, it will take many months to analyze, design, program, and implement. At this point, if the current contract should expire as scheduled on 10/31/2009, TWRA would lose its primary source of revenue due to the lack of means to sell licenses and boat registrations.

The RFP is for a highly complex computer and communications system which will take many months to complete. A Non-Competitive Amendment is requested because it would not be feasible for a different vendor to complete a duplicate of the current system prior to the expiration of the current contract. At stake is the primary source of revenue for the agency.

TO:

Contract & Audit Coordinator

FROM:

SUBJECT:

Also attached is a copy of the proposed amendment, copies of the original contract and previous amendments and their summary sheets, and Supplemental Documentation.

# $\frac{Supplemental\ Documentation\ Required\ for}{Fiscal\ Review\ Committee}$

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*Contact I	Name: Na	t Johnson		*Con	itact one:	615-78	1-65	556
*Contract Nu	mber: FA	-05-16159		*RFS Nur	nber:	RFS-32	28.0	1-301
*Original Co Begin	ntract Date: 11	-1-2004		*Current	End Date:	10-31-	2009	)
Current Re	quest Ame		imber: olicable)	5				
Proposed	Amendme	nt Effective ( <i>if app</i>	Date:	11/1/2009		•		
	*Depart	ment Subm	itting:	Tennessee V	Wildlif	e Resour	ces	Agency
		*Di	vision:	Information	Techr	ology		
		*Date Subr	nitted:	3/16/2009				
*Submi	tted Withi	n Sixty (60	) days:	Yes				
		If not, ex	cplain:					
	*Contra	act Vendor	Name:	The Active		rk, Inc.		
*(	Current Ma	ximum Lie	bility:	\$8,356,375.	.00			
*Current Contr								
(as Shown on Mo					I -		·	
	FY: 2006	FY: 20		FY: 2008	FY 2			7 2010
\$491,939.00	\$1,814,86			\$1,814,869		14,869	\$1	,814,869
*Current Total								
(attach backup d	documentai	tion from ST	ARS or	FDAS report		Y 2009	··· ·	FY 2010
FY: 2005	FY: 2006	FY: 20		FY: 2008	tl	us far		
\$594,166.46	\$1,123,981.	93 \$1,147,4	7,446.77 \$1,150,208.40 \$576,084.48 \$NA					
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# Supplemental Documentation Required for Fiscal Review Committee

<u>r istai ite</u>	ATCM COT	HIHITOUCC			
*Contract Funding State: \$8,3 Source/Amount:	356,375.00	Federal:			
Interdepartmental:		Other:			
If "other" please define:					
Dates of All Previous Amendment	s Brief	Description of Actions in Previous			
or Revisions: (if applicable)	Ame	ndments or Revisions: (if applicable)			
7/1/2005	Increase	d Maximum Liability and added Payment			
	Methodo	ologies for Quota Hunt Transactions			
7/1/2006	Added F	Payment Methodology for Quota Hunt			
	Transact	tions for Sportsman License Holders			
11/1/2007	Added F	Payment Methodologies re: Equipment			
11/6/2008	Change	of Vendor Name and FEIN			
Method of Original Award: (i)	f applicable)	. • .			
Include a detailed breakde		Anticipated expenditures for the			
actual expenditures anticipat	ed in each	remainder of the contract period are			
year of the contract. Include sp		expected to reflect the small increase			
items, source of funding, and d		experienced thus far. For each fiscal			
of any excess fund. (i)		year that should be a little over			
(2) 이 사이 바로 발생하는 이 이 이 아름이 있으고 말았습니다. 하지만 생각하는 발목 발표를 하는 것 같습니다. 그리고 있다고 있다는 것		\$1,150,00.00 per full fiscal year. This			
	will likely be all transaction costs – any				
		increase in expenditures being			
		associated with an increase in license			
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		increased revenue. Source of funding			
		will be the Wildlife Trust Fund. Any			
		excess fund will remain in the Wildlife			
		Trust Fund.			
Include a detailed breakdown,		No savings are expected to result from			
of any savings that the de		the extension of this contract. As noted,			
anticipates will result from this		transactions are linked to revenue,			
Include, at a minimum, re		therefore, it is critical to maintain the			
positions, reduction in equipm	and the second of the second o	contract in order to maintain revenue.			
reduction in travel. (i)					
Include a detailed analysis, in	dollars, of	There are no viable options to obtaining			
the cost of obtaining this service	e through	services. An extension is sought			
the proposed contract as co	mpared to	because there is not time to develop a			
other options. (i)	f applicable)	new system prior to the expiration of the			
		current contract due to the cancellation			
		of the new RFP due to excess cost.			

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REAL LICENSE SYSTEM   2008   4   OCTOBER 2007   08   PROFESSIONAL AND ADMINISTRATIVE SERVICES   1097207   228   01   0   146   00012   1547   FABSI 16199   00     REAL LICENSE SYSTEM   2008   5   NOVEMBER 2007   08   PROFESSIONAL AND ADMINISTRATIVE SERVICES   1152007   328   01   0   155   00006   2022   FABSI 16199   00     REAL LICENSE SYSTEM   2008   5   NOVEMBER 2007   08   PROFESSIONAL AND ADMINISTRATIVE SERVICES   1152007   328   01   0   155   00009   2023   FABSI 16199   00     REAL LICENSE SYSTEM   2008   5   NOVEMBER 2007   09   PROFESSIONAL AND ADMINISTRATIVE SERVICES   1152007   328   01   0   155   00009   2025   FABSI 16199   00     REAL LICENSE SYSTEM   2008   5   NOVEMBER 2007   09   PROFESSIONAL AND ADMINISTRATIVE SERVICES   1152007   328   01   0   155   00009   2025   FABSI 16199   00     REAL LICENSE SYSTEM   2008   5   NOVEMBER 2007   09   PROFESSIONAL AND ADMINISTRATIVE SERVICES   1152007   328   01   0   155   00009   2025   FABSI 16199   00     REAL LICENSE SYSTEM   2008   5   NOVEMBER 2007   09   PROFESSIONAL AND ADMINISTRATIVE SERVICES   1152007   328   01   0   255   00009   2025   FABSI 16199   00     REAL LICENSE SYSTEM   2008   6   DECEMBER 2007   09   PROFESSIONAL AND ADMINISTRATIVE SERVICES   1152007   328   01   0   253   00006   2005   FABSI 16199   00     REAL LICENSE SYSTEM   2008   6   DECEMBER 2007   09   PROFESSIONAL AND ADMINISTRATIVE SERVICES   1152007   328   01   0   253   00006   2005   FABSI 16199   00     REAL LICENSE SYSTEM   2008   6   DECEMBER 2007   09   PROFESSIONAL AND ADMINISTRATIVE SERVICES   1152007   328   01   0   253   00006   2005   FABSI 16199   00     REAL LICENSE SYSTEM   2008   6   DECEMBER 2007   09   PROFESSIONAL AND ADMINISTRATIVE SERVICES   1152007   238   00006   2005		7	30,	SEPTE	MBER 2007	8	1	3/18/2007	328	01	02	T			FA0516159	8	TWRA	6,001.00
HEAL LICENSES SYSTEM   2008   4   OCTOBER 2007   00   PROPESSIONAL AND ADMINISTRATIVE SERVICES   109/2007   238   01   0   166   160013   1547   1640161699   00     HEAL LICENSES SYSTEM   2008   5   NOVEMBER 2007   00   PROPESSIONAL AND ADMINISTRATIVE SERVICES   11/6/2007   238   01   0   195   100009   2022   740/616199   00     HEAL LICENSE SYSTEM   2008   5   NOVEMBER 2007   00   PROPESSIONAL AND ADMINISTRATIVE SERVICES   11/6/2007   238   01   0   195   100009   2026   740/616199   00     HEAL LICENSE SYSTEM   2008   5   NOVEMBER 2007   00   PROPESSIONAL AND ADMINISTRATIVE SERVICES   11/6/2007   238   01   0   195   100009   2026   740/616199   00     HEAL LICENSE SYSTEM   2008   5   NOVEMBER 2007   00   PROPESSIONAL AND ADMINISTRATIVE SERVICES   11/6/2007   238   01   0   205   2000   740/616199   00     HEAL LICENSE SYSTEM   2008   5   NOVEMBER 2007   00   PROPESSIONAL AND ADMINISTRATIVE SERVICES   11/6/2007   238   01   0   265   2000   740/616199   00     HEAL LICENSE SYSTEM   2008   6   DECEMBER 2007   00   PROPESSIONAL AND ADMINISTRATIVE SERVICES   11/6/2007   238   00006   2006   740/616199   00     HEAL LICENSE SYSTEM   2008   6   DECEMBER 2007   00   PROPESSIONAL AND ADMINISTRATIVE SERVICES   11/6/2007   238   00006   2006   740/616199   00     HEAL LICENSE SYSTEM   2008   6   DECEMBER 2007   00   PROPESSIONAL AND ADMINISTRATIVE SERVICES   11/6/2007   238   00006   2006   740/616199   00     HEAL LICENSE SYSTEM   2008   6   DECEMBER 2007   00   PROPESSIONAL AND ADMINISTRATIVE SERVICES   21/12/2007   238   00006   20	Γ	_	90	ОСТО	ER 2007		1	10/9/2007	326	10	-	Γ			FA0516159	8	TWRA	50,515,50
REAL LICENSE SYSTEM   2008   5   NOVEMBER 2007   04   PROFESSIONAL AND ADMINISTRATIVE SERVICES   115/2007   228   01   0   195   00005   2022   FAGS 61599   00     REAL LICENSE SYSTEM   2008   5   NOVEMBER 2007   04   PROFESSIONAL AND ADMINISTRATIVE SERVICES   115/2007   228   01   0   195   00000   2024   PAGS 61599   00     REAL LICENSE SYSTEM   2008   5   NOVEMBER 2007   06   PROFESSIONAL AND ADMINISTRATIVE SERVICES   115/2007   228   01   0   195   00010   2025   PAGS 61599   00     REAL LICENSE SYSTEM   2008   5   NOVEMBER 2007   06   PROFESSIONAL AND ADMINISTRATIVE SERVICES   115/2007   228   01   0   185   00010   2025   PAGS 61599   00     REAL LICENSE SYSTEM   2008   5   NOVEMBER 2007   09   PROFESSIONAL AND ADMINISTRATIVE SERVICES   115/2007   228   01   0   185   00010   2025   PAGS 61599   00     REAL LICENSE SYSTEM   2008   5   NOVEMBER 2007   09   PROFESSIONAL AND ADMINISTRATIVE SERVICES   115/2007   238   010   0   239   00006   2005   2		-1-	90,	0CT0	ER 2007		T	10:9/2007	328	01	Z		T		FA0516159	8	TWRA	25,858,32
REAL LICENSE SYSTEM   2008   5 NOVEMBER 2007   08 PROFESSIONIAL AND ADMINISTRATIVE SERVICES   116,2007   228   01 0 105   00000   2023   FAGS 161999   00     REAL LICENSE SYSTEM   2008   5 NOVEMBER 2007   09 PROFESSIONIAL AND ADMINISTRATIVE SERVICES   116,2007   228   01 0 105   00000   2025   FAGS 16199   00     REAL LICENSE SYSTEM   2008   5 NOVEMBER 2007   09 PROFESSIONIAL AND ADMINISTRATIVE SERVICES   116,2007   228   01 0 105   00000   2025   FAGS 16199   00     REAL LICENSE SYSTEM   2008   5 NOVEMBER 2007   09 PROFESSIONIAL AND ADMINISTRATIVE SERVICES   116,2007   228   01 0 2 00000   2025   FAGS 16199   00     REAL LICENSE SYSTEM   2008   5 NOVEMBER 2007   09 PROFESSIONIAL AND ADMINISTRATIVE SERVICES   121,2007   238   01 0 2 00000   2006   FAGS 16199   00     REAL LICENSE SYSTEM   2008   6 DECEMBER 2007   09 PROFESSIONIAL AND ADMINISTRATIVE SERVICES   121,2007   238   01 0 2 00000   2006   FAGS 16199   00     REAL LICENSE SYSTEM   2008   6 DECEMBER 2007   09 PROFESSIONIAL AND ADMINISTRATIVE SERVICES   121,2007   238   00000   2006   FAGS 16199   00     REAL LICENSE SYSTEM   2008   6 DECEMBER 2007   09 PROFESSIONIAL AND ADMINISTRATIVE SERVICES   121,2007   238   00000   2006   FAGS 16199   00     REAL LICENSE SYSTEM   2008   6 DECEMBER 2007   09 PROFESSIONIAL AND ADMINISTRATIVE SERVICES   121,2007   238   00000   2006   FAGS 16199   00     REAL LICENSE SYSTEM   2008   6 DECEMBER 2007   09 PROFESSIONIAL AND ADMINISTRATIVE SERVICES   121,2007   238   00000   2006   FAGS 16199   00     REAL LICENSE SYSTEM   2008   6 DECEMBER 2007   09 PROFESSIONIAL AND ADMINISTRATIVE SERVICES   121,2007   238   00000   2006   FAGS 16199   00     REAL LICENSE SYSTEM   2008   6 DECEMBER 2007   09 PROFESSIONIAL AND ADMINISTRATIVE SERVICES   121,2007   238   00000   2006   FAGS 16199   00     REAL LICENSE SYSTEM   2008   6 DECEMBER 2007   2008   2		-	50	NOVER	18ER 2007	80	7	11/5/2007	328	10	61	Τ		+	FA0516159	: 8	TAKEA	13,207.92
REAL LICENSE SYSTEM   2008   5   NOVEMBER 2007   08   PROFESSIONAL AND ADMINISTRATIVE SERVICES   11/3/2007   328   01   0   195   00009   2025   7405/16199   00     REAL LICENSE SYSTEM   2008   5   NOVEMBER 2007   09   PROFESSIONAL AND ADMINISTRATIVE SERVICES   11/3/2007   328   01   0   195   00009   2025   7405/16199   00     REAL LICENSE SYSTEM   2008   5   NOVEMBER 2007   09   PROFESSIONAL AND ADMINISTRATIVE SERVICES   11/3/2007   328   01   0   235   00006   2006   PADSISSIONAL AND ADMINISTRATIVE SERVICES   11/3/2007   328   01   0   233   00006   2006   PADSISSIONAL AND ADMINISTRATIVE SERVICES   11/3/2007   328   01   0   233   00006   2006   PADSISSIONAL AND ADMINISTRATIVE SERVICES   11/3/2007   328   01   0   233   00006   2006   PADSISSIONAL AND ADMINISTRATIVE SERVICES   11/3/2007   328   01   0   233   00006   2006   PADSISSIONAL AND ADMINISTRATIVE SERVICES   11/3/2007   238   00006   2006   PADSISSIONAL AND ADMINISTRATIVE SERVICES   11/3/2007   2008   PADSISSIONAL AND AD		1	15	NOVE	19ER 2007	8	77	11/5/2007	328	10	0	Ī	T		FA0516159	8 8	TWEE	64,891.36
REAL LICENSE SYSTEM   2008   5   HOVENSER 2007   03   PROFESSIONAL AND ADMINISTRATIVE SERVICES   11/3/2007   228   01   D   155   000009   2025   FABSISSO   00     REAL LICENSE SYSTEM   2008   5   HOVENSER 2007   03   PROFESSIONAL AND ADMINISTRATIVE SERVICES   11/3/2007   228   01   D   155   00010   2026   FABSISSO   00     REAL LICENSE SYSTEM   2008   5   HOVENSER 2007   03   PROFESSIONAL AND ADMINISTRATIVE SERVICES   11/3/2007   238   01   D   233   00006   2006   FABSISSO   00     REAL LICENSE SYSTEM   2008   6   DECEMBER 2007   03   PROFESSIONAL AND ADMINISTRATIVE SERVICES   11/3/2007   238   01   D   233   00006   2006   FABSISSO   00     REAL LICENSE SYSTEM   2008   6   DECEMBER 2007   03   PROFESSIONAL AND ADMINISTRATIVE SERVICES   11/3/2007   238   001   D   233   00006   2006   FABSISSO   00     REAL LICENSE SYSTEM   2008   6   DECEMBER 2007   03   PROFESSIONAL AND ADMINISTRATIVE SERVICES   11/3/2007   238   001   D   233   00006   2006   FABSISSO   00     REAL LICENSE SYSTEM   2008   6   DECEMBER 2007   03   PROFESSIONAL AND ADMINISTRATIVE SERVICES   11/3/2007   238   00006   2006   FABSISSO   00     REAL LICENSE SYSTEM   2008   6   DECEMBER 2007   03   PROFESSIONAL AND ADMINISTRATIVE SERVICES   11/3/2007   238   00006   2006   FABSISSO   00     REAL LICENSE SYSTEM   2008   6   DECEMBER 2007   03   PROFESSIONAL AND ADMINISTRATIVE SERVICES   11/3/2007   238   00006   2006   FABSISSO   00     REAL LICENSE SYSTEM   2008   6   DECEMBER 2007   04   2008   2006   FABSISSO   00     REAL LICENSE SYSTEM   2008   04   PROFESSIONAL AND ADMINISTRATIVE SERVICES   11/3/2007   238   00006   2008   FABSISSO   00     REAL LICENSE SYSTEM   2008   04   PROFESSIONAL AND ADMINISTRATIVE SERVICES   11/3/2007   238   00006   2008   PROFESSIONAL AND ADMINISTRATIVE SERVICES   11/3/2007   238   00006	Γ		90,	NOVE	18ER 2007	T	$\top$	11/5/2007	328	010	6				FA0516159	8	TWRA	2,000.00
REAL LICENSE SYSTEM   2008   5	T		100 100 100	NOVE	Τ	8	╗	1/5/2007	328	6	0				FA0516159	: 8	TWR	2,500.00
REAL GOATING  2008   5 10/0/EABER 2007   03   PROPESSIONAL AND ADMINISTRATIVE SERVICES   1/16/2007   228   010   D   265   00006   2002   FABSILLE   FAB	T		50	NOVE	1	88	_ _	11/5/2007	328	io	2			-	FA05 16 150	3 8	- IN	5,000.00
REAL LCBNSE SYSTEM 2008   DECEMBER 2007   08   PROPESSIONAL AND ADMINISTRATIVE SERVICES   12/102000   238   01   D   265   00006   2806   FARS16199   00   REAL ROATIVES   2008   6   DECEMBER 2007   08   PROPESSIONAL AND ADMINISTRATIVE SERVICES   12/102000   128   00006   2806   FARS16199   00   280   2806   PARS16199   280   2			5	NOVE	_	E .	$\neg$	10/2/2007	328	10			1	+	FA0516150	8 8	#BNUL	2,500.00
		-1-		2000	2000	3 8	7	100000000000000000000000000000000000000	21.00						2000000	8 8	vine.	7,355.60
NECT (BOATING)   12008   15   IDECEMBER 2007   108   PROFESSIONAL AND ADMINISTRATIVE SERVICES   12/10/10/2007   13/10   10   12/10   10   10   10   10   10   10   10		SIEM	3 8	1010	וסבט כססו	3 8	Т	1000010	970						r AUSTO 139	3		52,452,52
			2 BO	1325	IBER 2007	8	_	ADDGG COAC	500									
			2008	JANUA	AY 2008	88	Т.	1/8/2008	328	5 5			2806		FA0515159 FA0516159	8 5	TWRA	4,987.84

tost Center	Cost Conter Codo	Cost Contor Funding Mo	Fiscal Month	Effective Month	Major Object Code	Major Object Tile	1 - 1	sh artment abor	Batch Ba Division Ty Numbor Ty	Batch Batch Typo Number		rat mont int oor	Current R. Document R. Current Suffix R.	Jocument	Reference Document Reference Suffix		Expenditures	Subtotals
1199	REAL LICENSE SYSTEM	2008 7	4	JANUARY 2008		PROFESSIONAL AND ADMINISTRATIVE SERVICES 17.	Γ.			П	10000	3522	Ľ.	FA0516159	10	TWRA	24,463.40	
6913	REAL (BOATING)	2008	4	JANUARY 2008	88	_	1		10		00005	3209	u.	FA0516159	02		2,932.16	
6913	REAL (BOATING)	2008	4	JANUARY 2008	Γ	PROFESSIONAL AND ADMINISTRATIVE SERVICES 1/			10		00005	3522	E.	FA0516159	02	TWRA	2,460,48	
1199	REAL LICENSE SYSTEM	2008		FEBRUARY 2008	Γ		١.		010	306	00003	3698	ui_	FA0516159	10		19.050.00	-
1199	REAL LICENSE SYSTEM	2008		MARCH 2008	Γ	PROFESSIONAL AND ADMINISTRATIVE SERVICES 3.	1		0 10	417	00003	3610	4	FA0516159	10		10,879.40	
1199	REAL LICENSE SYSTEM	2008		MARCH 2008	Γ		Г		0 10	Г	10000	3769	<u>u</u>	FA0516159	10		1,675.00	
1199	REAL LICENSE SYSTEM	2008		MAHCH 2008	Γ				0 10	458	00003	4070	u.	FA0516159	10		40,121.84	
6913	REAL (BOATING)	2008		MARCH 2008	Γ	PHOFESSIONAL AND ADMINISTRATIVE SERVICES 3.			10		00004	3610	1	FA0516159	05		3,930.08	
1199	REAL LICENSE SYSTEM	2008	Γ	APRIL 2008	Γ	Г-	Г		0 10		00005	4482	<u>u</u>	FA0516159	10		211,240,48	
6913	REAL (BOATING)	2008		APRIL 2008	8	-	Г.	328 0	<u>a</u>		00003	4482	4	FA0516159	05		12,863.84	
1199	REAL LICENSE SYSTEM	2008		MAY 2008		1	1		10		10000	5026	4	FA0516159	10		134,206.16	
6913	REAL (BOATING)	2008		MAY 2008	88						20000	5026	1	FA0516159	02		15,455.44	
1199	REAL LICENSE SYSTEM	2008 12		JUNE 2008	8	PROFESSIONAL AND ADMINISTRATIVE SERVICES 6			010		00004	6208	_	FA0516159	:0		00.0530.00	
1199	REAL LICENSE SYSTEM 2008	2008 12		JUNE 2008	8	PROFESSIONAL AND ADMINISTRATIVE SERVICES 6			10		00003	6544	***	FA0516159	ĩo.		131,136,72	
6913	REAL (BOATING)	2008 12		JUNE 2008	8			328	10	209	00004	6544	4	FA0516159	0.5		21,464.96	1,150,208.40
1199	REAL LICENSE SYSTEM	2	Ť	AUGUST 2008	88	1	1		5	1001	00003	0551	_	FA0516159	10		85,381.35	
1199	REAL LICENSE SYSTEM	13	<u>₹</u>	AUGUST 2008	8		1		10	Г	90005	0612		-A0516159	01		91,510.88	
6913	REAL (BOATING)	8	đ	AUGUST 2008	8	l i				150 0	\$0000	1550	-	*A0516159	203		24,945.36	
6913	REAL (BOATING)	2	đ	AUGUST 2008	8					O 057	00004	0612	_	FA0516159	02	-	17,453.04	
6913	REAL (BOATING)	<u>C1</u>	4	AUGUST 2008	8			328	J 10	250 0	90000	0613		FA0516159	05		3,150.00	
1199	REAL LICENSE SYSTEM	6	Ś	SEPTEMBER 2008	8	ı			g 10	501 Q	10000	1100	1	FA0516159	10		60,515.35	
6913	REAL (BOATING)	6	S	SEPTEMBER 2008	8	5	9/18/2008			D 105	00005	1100	1	FA0516159	20		11,922.24	
1199	REAL LICENSE SYSTEM	7	0	OCTOBER 2008	90	<u> </u>	10/27/2008 328		0 10	121	00000	2334	_	FA0516159	10		14,925.00	
1199	REAL LICENSE SYSTEM	ın	Z	NOVEMBER 2008	8	F	11/18/2008 328		a 10	208	20000	2712	-	FA0516159	101		73,347.08	
1199	REAL LICENSE SYSTEM	in	2	NOVEMBER 2008	98	_	11/18/2008 328		o 10	208	60000	2713		FA0516159	01		54,425.68	
6913	REAL (BOATING)	6	2	NOVEMBER 2008	90	-	11/18/2008   328	328	6	208	90000	2712	_	FA0516159	10		3,989.04	
6913	REAL (BOATING)	5	2	NOVEMBER 2008	8			328	٥١ ١٥	208	01000	2713		FA0516159	101		6,768.08	
1199	REAL LICENSE SYSTEM	<u> </u>	-	JANUARY 2009	80		1/27/2009		<u>ة</u> (5	312	10000	3990		FA0516159	90		84,553.04	
6611	REAL LICENSE SYSTEM	_	-	JANUARY 2009	90		1/27/2009		10	312	00003	3991		FA0516159	50)		22,776.00	
6913	REAL (BOATING)	_	-7_	JANUARY 2009	80	_	1/27/2009		10	312	20005	3990		FA0516159	8		2,214.08	
6913	REAL (BOATING)	-	<u>-</u>	JANUARY 2009	90	_	1/27/2009		5	315	100004	3991		FA0516159	90		2,702.48	
1199	REAL LICENSE SYSTEM	8		FEBRUARY 2009	90		2/12/2009		5	347	10000	5205		FA0516159	95		11,574.48	
6913	REAL (BOATING)	<u>87</u>	<u>"</u> _	FEBRUARY 2009	90	PROFESSIONAL AND ADMINISTRATIVE SERVICES 2	2/12/2009	328	5	347	20002	5205		FA0516159	90		3,921.28	576.084.48
Total	Total	Total	ľ		L				_				_				4 501 888 041	4 501 BBB DA

NON-AMD123008

## NON-COMPETITIVE AMENDMENT REQUEST:

APPROVED			
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		·	
Commissioner o	f Finance & A	dministration	

1)	RFS#	RFP-328.01- 60023			•
2)	Procuring Agency:	Tennessee Wildlife Resources Agency	•		·,
		EXISTING CONTRACT INFORMATON			•
3)	Service Caption :	Develop and administer automated Remote Easy Access Licentechnology at license agent sites and provide an internet site an sales.	se (R. id:tele	E.A.L.) System using poin bhone fulfillment center fo	t of sale r license
4)	Contractor:	The Active Network, Inc.			···.
5)	Contract #	FA-05-16159-04			
6)	Contract Start Date :	11/01/2004			
7)	CURRENT Contract Er	d Date: (if ALL options to extend the contract are exercised)	10/3	1/2009	
8)	CURRENT Maximum C	ost: (if ALL options to extend the contract are exercised)	\$8,3	. · · · · · · · · · · · · · · · · · · ·	
		PROPOSED AMENDMENT INFORMATON	٠.		
9)	Amendment #		,	5	
10)	Amendment Effective	Date: (attached explanation required if < 60 days after F&A rece	ipt)	11/01/2009	;
11)	PROPOSED Contract I	End Date: (if ALL options to extend the contract are exercised)		10/3.1/2010	·. · ·
12)	PROPOSED Maximum	Cost: (if ALL options to extend the contract are exercised)	: :	\$ 10,171,244.00	•
•	Approval Criteria : (select one)	use of Non-Competitive Negotiation is in the best	inter	est of the state	. •
	(select one)	only one uniquely qualified service provider able	to pro	ovide the service	
14)	Description of the Pro	posed Amendment Effects & Any Additional Service :	·· · · ·		٠.
	Amendment 5 will exten contract specifications.	d the expiration of the contract by one year. Services will be the	same	as currently required by th	e current
15)	Explanation of Need for	or the Proposed Amendment :		•	
				•	

A request for proposals is in process at the present time which will lead to a contract to replace the current license system contract. This contract expires on 10/31/2009. The TWRA license system is complex and provides the primary source of TWRA revenue. It is felt that, due to the complexity of the system, if the contract is awarded to a vendor other than the current contractor, there will not be sufficient time for the new contractor to fully develop the system as required by the RFP and be prepared for system production by the scheduled implementation date. This would result in a serious loss of revenue for TWRA and have a profound impact on the agency's ability to serve the needs of the hunting, fishing, and boating public.

16) Name & Address of Contractor's Current Principal Owner(s): (not required for a TN state education institution)
Contractor is a corporation.
Matt Landa, President 10182 Telesis Court, Suite 100
San Diego, CA 92121-4777
17) Office for Information Resources Endorsement: (required for information technology service; n/a to THDA)
Documentation is Not Applicable to this Request Attached to this Request
18) eHealth Initiative Endorsement: (required for health-related professional, pharmaceutical, laboratory, or imaging service)
Documentation is X Not Applicable to this Request Attached to this Request
19) Department of Human Resources Endorsement : (required for state employees training service)
Documentation is 🔀 Not Applicable to this Request 🔲 Attached to this Request
20) Description of Procuring Agency Efforts to Identify Reasonable, Competitive, Procurement Alternatives:
A request for proposals is in process at the present time which will lead to a contract to replace the current license system contract, which expires on 10/31/2009. This request is to provide time for our department to complete the new RFP process and allow the selected vendor to complete the required design and programming prior to implementation.
21) Justification for the Proposed Non-Competitive Amendment :
The subject contract for this amendment is for our Remote Easy Access License (REAL) system, on which TWRA is highly dependent as our primary revenue source. We are asking for approval of a non-competitive contract amendment to extend the current contract by one year. To allow the current system provided by The Active Network, Inc. to expire without a new system in place would require TWRA to develop a makeshift manual system of issuing licenses, which would not provide customer data and would take away any knowledge of the TWRA constituency. In addition, processing of a vast array of data collected by the REAL system now in place, such as license agent data, big game harvest data, quota hunt applications and draw processes, commercial fishing and mussel harvest data, hunter and boating education data (which are now a part of the current system) could not be included in the makeshift system.
The REAL system has allowed TWRA to reduce its data entry staff from 10 employees to 3 employees by moving the key entry of applications, harvest data, and various license sales from the Nashville office to the public arena via point of sale devices in neighborhood stores. With a change to a makeshift manual system TWRA would again need additional data entry staff to key requests for boat registration certificates and decals, harvest data, quota hunt applications, as well as many other types of sales requests. In this time of economic stress, TWRA does not want to go in this direction. This would be unacceptable to the public and would result in a critical loss of revenue and data for TWRA. A Non-competitive amendment to extend the expiration date of this contract is deemed the sole means of assuring an automated license system meeting TWRA requirements and continuance of the agency's revenue flow while the new contractor develops their system.
AGENCY HEAD SIGNATURE & DATE:  (must be signed & dated by the ACTUAL procuring agency head as detailed on the Signature Certification on file with OCR— signature by an authorized signatory will be accepted only in documented exigent circumstances)
Ed Carlo 3.2.09

NON-AMD123008

## NON-COMPETITIVE AMENDMENT REQUEST:

APPROVED			cy09-146
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Commissioner o	f Finance & A	dministration	٠

		·	
1)	RFS#	RFP-328.01- 60023	
2)	Procuring Agency :	Tennessee Wildlife Resources Agency	
	•	EXISTING CONTRACT INFORMATION	
3)	Service Caption :	Develop and administer automated Remote Easy Access Licentechnology at license agent sites and provide an internet site an sales.	
4)	Contractor:	The Active Network, Inc.	94.
5)	Contract #	FA-05-16159-04	
6)	Contract Start Date :	11/01/2004	
7)	CURRENT Contract Er	nd Date: (if ALL options to extend the contract are exercised)	10/31/2009
8)	CURRENT Maximum C	ost: (if ALL options to extend the contract are exercised)	\$8,356,375.00
		PROPOSED AMENDMENT INFORMATON	
9)	Amendment #		5
10)	Amendment Effective	Date: (attached explanation required if < 60 days after F&A rece	ipt) 11/01/2009
11)	PROPOSED Contract I	End Date: (if ALL options to extend the contract are exercised)	10/31/2010
12)	PROPOSED Maximum	Cost: (if ALL options to extend the contract are exercised)	\$ 10,171,244.00
13)	Approval Criteria : (select one)	use of Non-Competitive Negotiation is in the best	interest of the state
	(Select one)	only one uniquely qualified service provider able	to provide the service
14)	Description of the Pro	posed Amendment Effects & Any Additional Service :	
	Amendment 5 will exter contract specifications.	d the expiration of the contract by one year. Services will be the	same as currently required by the current
15)	Explanation of Need for	or the Proposed Amendment :	

A request for proposals is in process at the present time which will lead to a contract to replace the current license system contract. This contract expires on 10/31/2009. The TWRA license system is complex and provides the primary source of TWRA revenue. It is felt that, due to the complexity of the system, if the contract is awarded to a vendor other than the current contractor, there will not be sufficient time for the new contractor to fully develop the system as required by the RFP and be prepared for system production by the scheduled implementation date. This would result in a serious loss of revenue for TWRA and have a profound impact on the agency's ability to serve the needs of the hunting, fishing, and boating public.

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16) Name & Address of Contractor's Current Principal Owner(s): (not required for a TN state education institution)
Contractor is a corporation.
Matt Landa, President 10182 Telesis Court, Suite 100
San Diego, CA 92121-4777
17) Office for Information Resources Endorsement: (required for information technology service; n/a to THDA)
Documentation is Not Applicable to this Request Attached to this Request
18) eHealth Initiative Endorsement: (required for health-related professional, pharmaceutical, laboratory, or imaging service)
Documentation is 🛛 Not Applicable to this Request 🔲 Attached to this Request
19) Department of Human Resources Endorsement: (required for state employees training service)
Documentation is 🛛 Not Applicable to this Request 🔲 Attached to this Request
20) Description of Procuring Agency Efforts to Identify Reasonable, Competitive, Procurement Alternatives:
A request for proposals is in process at the present time which will lead to a contract to replace the current license system contract, which expires on 10/31/2009. This request is to provide time for our department to complete the new RFP process and allow the selected vendor to complete the required design and programming prior to implementation.
21) Justification for the Proposed Non-Competitive Amendment :
The subject contract for this amendment is for our Remote Easy Access License (REAL) system, on which TWRA is highly dependent as our primary revenue source. We are asking for approval of a non-competitive contract amendment to extend the current contract by one year. To allow the current system provided by The Active Network, Inc. to expire without a new system in place would require TWRA to develop a makeshift manual system of issuing licenses, which would not provide customer data and would take away any knowledge of the TWRA constituency. In addition, processing of a vast array of data collected by the REAL system now in place, such as license agent data, big game harvest data, quota hunt applications and draw processes, commercial fishing and mussel harvest data, hunter and boating education data (which are now a part of the current system) could not be included in the makeshift system.  The REAL system has allowed TWRA to reduce its data entry staff from 10 employees to 3 employees by moving the key entry of applications, harvest data, and various license sales from the Nashville office to the public arena via point of sale devices in neighborhood stores. With a change to a makeshift manual system TWRA would again need additional data entry staff to key requests for boat registration certificates and decals, harvest data, quota hunt applications, as well as many other types of sales requests. In this time of economic stress, TWRA does not want to go in this direction. This would be unacceptable to the public and would result in a critical loss of revenue and data for TWRA. A Non-competitive amendment to extend the expiration date of this contract is deemed the sole means of assuring an automated license system meeting TWRA requirements and continuance of the agency's revenue flow while the new contractor develops their system.
( <u>must</u> be signed & dated by the <u>ACTUAL</u> procuring agency head as detailed on the Signature Certification on file with OCR— signature by an authorized signatory will be accepted only in documented exigent circumstances)
Ed Carto 3.2.09

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RFS#	10.75			ě.			Contract	#				
		RFS-	328.0	1-301					FA-05-	1615	9-05	
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Contrac	ctor Name						a measurement data in the particular	or ID#(	FEIN or SSN	l)		
The Ad	ctive Netwo	ork, Inc.					C-	or X	<b>V-</b> 33-08	884962		
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2005	\$	491,939.0	_								\$	491,939.00
2006		1,814,869.0									\$	1,814,869.00
2007		1,814,869.0	<del></del>			<u> </u>					\$	1,814,869.00
2008		1,814,869.0									\$	1,814,869.00
2009		1,814,869.0									\$	1,814,869.00
2010		,814,869.0									\$	1,814,869.00
2011	\$	604,960.0	_								\$	604,960.00
TOTAL:		),171,244.0			-	\$	-	\$		-	\$	10,171,244.00
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2005	\$	491,939.0				State A	gency Buc	get Off	icer Approva	ıl		
2006	\$	1,814,869.0	0					•		. *		
2007	\$	1,814,869.0	0					,		•		
2008	\$	1,814,869.0	0			Fundir	a Certific	ition/co	rtification recu	iired by	ΤΟΔ ΑΟ	-4-5113, that there
2009	\$	1,814,869.0	0			is a bala	ance in the a	opropriat	ion from which	the obli	gated expe	nditure is required
2010	\$	1,814,869.0	0			to be pa incurred	The state of the s	otherwis	e encumbered	to pay	obligations	previously
2011	\$	604,960.0	0									
TOTAL:	\$ 10	),171,244.0	0 \$		-				٠.	. *	•	
End Date	10/	31/2009		10/31/	2010	1			•			
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Contract Numb	ber:	A Company of the Comp			A-05-16159-05		
Fiscal Year:			·	<u></u>	2009		
Allotment Code	Cost Center	Object Code	Fund	Grant Code	Subgrant Code	CFDA#	Amount
32801	6611	083	20				\$1,564,318.00
32801	6913	083	20				\$250,551.00
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Contract Number:		CONTRACT SUMMARY SHEET SUPPLEMENT FA-05-16159-05							
Allotment Code	Cost Center	Object Code	Fund	Grant Code	Subgrant Code	CFDA#	Amount		
32801	6611	083	20				\$1,564,318.00		
32801	6913	083	20				\$250,551.00		
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		<u> </u>	TOTAL				\$1,814,869.00		

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	CONTRACT SUMMARY SHEET SUPPLEMENT								
Contract Numb	ber:			F	A-05-16159-05				
Fiscal Year:			2011						
Allotment Code	Cost Center	Object Code	Fund	Grant Code	Subgrant Code	CFDA#	Amount		
32801	6611	083	20				\$521,443.00		
32801	. 6913	083	20				\$83,517.00		
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			TOTAL				\$604,960.00		

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## **AMENDMENT 5 TO FA-05-16159**

This Contract Amendment is made and entered by and between the State of Tennessee, Tennessee Wildlife Resources Agency, hereinafter referred to as the "State" and THE ACTIVE NETWORK, INC., hereinafter referred to as the "Contractor." It is mutually understood and agreed by and between said, undersigned contracting parties that the subject Contract is hereby amended as follows:

- 1. The text of Contract Section B.1 is deleted in its entirety and replaced with the following:
- B.1. <u>Contract Term.</u> This Contract shall be effective for the period commencing on November 1, 2004 and ending on October 31, 2010. The State shall have no obligation for services rendered by the Contractor that are not performed within the specified period.
- 2. The text of Contract Section C.1 is deleted in its entirety and replaced with the following:
- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed Eight Million, three hundred fifty six thousand, three hundred seventy five Dollars (\$10,171,244.00). The Service Rates in Section C.3 shall constitute the entire compensation due the Contractor for the Service and all of the Contractor's obligations hereunder regardless of the difficulty, materials or equipment required. The Service Rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with the Service Rates detailed in Section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

The revisions set forth herein shall be effective 11/1/2009. All other terms and conditions not expressly amended herein shall remain in full force and effect.

IN WITNESS WHEREOF, THE ACTIVE NETWORK, INC.:

**CONTRACTOR SIGNATURE** 

DATE

Matt Landa, President

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

TENNESSEE WILDLIFE RESOURCES AGENCY:

Gary T. Myers, Executive Director

DATE

#### APPROVED:

M. D. GOETZ, JR.
COMMISSIONER OF FINANCE & ADMINISTRATION

DATE

JUSTIN P. WILSON
COMPTROLLER OF THE TREASURY

DATE

CY09-90

060206

### REQUEST: RULE EXCEPTION

APPROVED Contingent upon approval of a
NON-Competitive amendment request

Commissioner of Finance & Administration

Date:

FFR 9 2000

<b>RFS #</b> 328 . 01 — 301 — 09		· .:		
INFORM	ATION ABOUT THE EXC	EPTION(S) R	EQUESTED	
SUBJECT RULE NUMBER(S):				
0620-3-307(5)				
DESCRIPTION OF EXCEPTION(S):				
TWRA seeks a rule exception to permit a six (	(6) year contract.			
		· · · · · · · · · · · · · · · · · · ·		: .

JUSTIFICATION: (compelling rationale for and validation of rule exception request)

The subject contract for this request (FA-05-16159-04) is for our Remote Easy Access License (REAL) system, on which TWRA is highly dependent as our primary revenue source. We are asking for a rule exception to extend the current contract by one year, which would be for a total of six (6) years. A request for proposals is in process at the present time which will lead to a contract to replace the current license system contract. This contract expires on 10/31/2009. The TWRA license system is complex and provides the primary source of TWRA revenue. It is felt that, due to the complexity of the system, if the contract is awarded to a vendor other than the current contractor, there will not be sufficient time for the new contractor to fully develop the system as required by the RFP and be prepared for system production by the scheduled implementation date.

To allow the current system provided by The Active Network, Inc. to expire without a new system in place would require TWRA to develop a makeshift manual system of issuing licenses, which would not provide customer data and would take away any knowledge of the TWRA constituency. In addition, processing of a vast array of data collected by the REAL system now in place, such as license agent data, big game harvest data, quota hunt applications and draw processes, commercial fishing and mussel harvest data, hunter and boating education data (which are now a part of the current system) could not be included in the makeshift system.

The REAL system has allowed TWRA to reduce its data entry staff from 10 employees to 3 employees by moving the key entry of applications, harvest data, and various license sales from the Nashville office to the public arena via point of sale devices in neighborhood stores. With a change to a makeshift manual system TWRA would again need additional data entry staff to key requests for boat registration certificates and decals, harvest data, quota hunt applications, as well as many other types of sales requests. In this time of economic stress, TWRA does not want to go in this direction. This would be unacceptable to the public and would result in a critical loss of revenue and data for TWRA. A Non-competitive amendment to extend the expiration date of this contract is deemed the sole means of assuring an automated license system meeting TWRA requirements and continuance of the agency's revenue flow while the new contractor develops their system.

	INFORMATION REGARDII	IG THE APPLICABLE CONTRA	4CT	•
CONTRACTOR:	The Active Network, Inc.		·. ·	
SERVICE INVOLVED :	Develop and administer automated R technology at license agent sites and sales.	emote Easy Access.License (R. provide an internet site and tele	E.A.L.) System using point of a phone fulfillment center for lice	sale ense
			OCR	
	1			

FEB **0** 4 2009

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	060206
BEGIN DATE:	11/01/2004
END DATE (including ALL options for term extension):	10/31/2010
MAXIMUM LIABILITY (including ALL options for term extension):	\$ 10,171,244.00
AGENCY HEAD REQUEST SIGNATURE:	7. Myeram 2/3/09

### RFP CANCELLATION REQUEST:

			<del></del>			
			APPROVED			
			Commissioner of Finance 8	& Administration		
			Date:			
1)	REQUEST RFS #	328.01-00024				
2)	RFP#	328.01-698				
3)	SERVICE :	Services and equipment necessary to support the provision, implementation, and management of a Remote Easy Access License (R.E.A.L.) system.				
4)	STATUTORY	unreasonably high prices		,		
	APPROVAL CRITERIA					
		failure of all proposals to meet technical specifications				
	(per T.C.A., §12-4- 109 (a)(1)(C)) :	error in the request for propos	als			
		cessation of need				
		unavailability of funds				
		proceeding with the procurement	ent would be detrimental to	the state's best interests		
5)	REASON AND JUST	TIFICATION FOR RFP CANCELLATION :		•		
	ly one proposal was project.	received and the prices associated wit	h that proposal were three tim	es the budgeted amount for		
6)	AGENCY HEAD SIG	NATURE & DATE (procuring agency head	or authorized signatory):			
•	Tod	Carlo		- 6 60		
Ed	Ed Carter, Executive Director, Tennessee Wildlife Resources Agency  Date 3/9/09					

,	CONTRACT SUMMARY SHEET 021908										
RFS#				arani I zapa iriti. Maria iri		Contrac	t#				
		RFS-328	3.01-301			FA-05-16159-04					
State A	gency					State/Agency Division					
Tennes	ssee Wil	dlife Resources	Agency			Informa	ation	Technology, Carc	l Freem	ıan, 615-7	'81-6639
Contrac	tor Nam	ie .				Contrac	torl	D#(FEIN or SSN	) (***) 		
The Ac	tive Net	work, Inc.			į	C-	or	X V- 33-08	84962		
Service	Marie C. L. Marie Land	A Maria Caralla Carall									
boat re	Develop and administer the automated Remote Easy Access License (REAL) System to sell hunting and fishing licenses and boat registrations using point of sale technology at license agent sites, using telephone sales center, and using internet including fulfillment of the sale.										
Cor	Contract BEGIN Date Contract END Date Subrecipient or Vendor? CFDA #										
	1-Nov	·-04		31-Oct-09			V	/endor		N	I/A
Mark Ea	ich TRU	E Statement /									
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	801	6611/6913		083		0	. 100, 433.	N/A			N/A
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2005	\$	491,939.00								\$	491,939.00
2006	\$	1,814,869.00				· · · · · · · · · · · · · · · · · · ·	. !			\$ 	1,814,869.00
2007	\$	1,814,869.00							;	\$ ·	1,814,869.00
2008	\$	1,814,869.00								\$ 	1,814,869.00
2009	\$	1,814,869.00								\$	1,814,869.00
2010	\$	604,960.00						·		\$	604,960.00
TOTAL:	\$	8,356,375.00	\$	-	\$ .		-	\$	-	\$	8,356,375.00
, e	OMPLE	TE FOR AMEN	A		State A	gency Fi	scal	Contact & Teleph	ione#		
FY	Production of the last of the	Contract & Amendments	Property operate and the Co	nendment VLY				Sandra Mosely	781-6512		Constant of the Constant of th
2005	\$	491,939.00			State A	gency Bu	ıdge	t Officer Approva	M		
2006	\$	1,814,869.00				_	H				
2007	\$	1,814,869.00			assalar bassasan	ed officers and the second	$\sum_{i=1}^{n}$	- lary	10000000		
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2009	\$	1,814,869.00						nerwise encumbered			
2010	\$	604,960.00			incurred	I)					
TOTAL:	\$	8,356,375.00	\$	-							
End Date	4	0/31/2009	}	1/2009							
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* Procui	<u></u>	Process Summ	ary (comple	te for Non-Co	impetitive (	legotiation	. Con	npetitive Negotiation	OR Alte	rnative Me	thod)
N/A for a											

Contract Number:		CONTRACT SUMMARY SHEET SUPPLEMENT									
		FA-05-16159-04									
Fiscal Year:			2009								
Allotment Code	Cost Center	Object Code	Fund	Grant Code	Subgrant (	CFDA:#	Amount.				
32801	6611	083	20				\$1,564,318.0				
32801	6913	083	. 20				\$250,551.00				
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			TOTAL				\$1,814,869.00				

## **AMENDMENT 4 TO FA-05-16159**

This Contract Amendment is made and entered by and between the State of Tennessee, Tennessee Wildlife Resources Agency, hereinafter referred to as the "State" and Central Bank, hereinafter referred to as the "Contractor." It is mutually understood and agreed by and between said, undersigned contracting parties that the subject Contract is hereby amended as follows:

- 1. The following is added as Contract Section E.22.:
  - E.22. <u>Contractor Name</u>. All references to "Central Bank" shall be deleted and replaced with "The Active Network, Inc."
- 2. The following is added as Contract Section E.23.:
  - E.23. <u>Federal Employer Identification Number</u>. All references to FEIN, "43-0975002" shall be deleted and replaced with FEIN. "33-0884962."

The revisions set forth herein shall be effective 11/06/2008. All other terms and conditions not expressly amended herein shall remain in full force and effect.

IN WITNESS WHEREOF:

THE ACTIVE NETWORK, INC.:

Matt of Al	11/18/08
CONTRACTOR SIGNATURE	DATE
Matt Landa, President	
PRINTED NAME AND TITLE OF CONTRACTOR SIGNAT	ORY (above)
TENNESSEE WILDLIFE RESOURCES AGENCY:	
Gary T. Myers, Executive Director	11/6/08 DATE

APPROVED:

M. D. GOETZ, JR., COMMISSIONER DATE

DEPARTMENT OF FINANCE AND ADMINISTRATION

## NOT APPLICABLE

DEBORAH E. STORY, COMMISSIONER DEPARTMENT OF HUMAN RESOURCES	DATE
de Galon	12/18/08
JOHN G MORGAN COMPTROLLER OF THE TREASURY	DATE /

#### AMENDMENT 4 TO FA-05-16159

This Contract Amendment is made and entered by and between the State of Tennessee, Tennessee Wildlife Resources Agency, hereinafter referred to as the "State" and Central Bank, hereinafter referred to as the "Contractor." It is mutually understood and agreed by and between said, undersigned contracting parties that the subject Contract is hereby amended as follows:

- 1. The following is added as Contract Section E.22.:
  - E.22. <u>Contractor Name</u>. All references to "Central Bank" shall be deleted and replaced with "The Active Network, Inc."
- 2. The following is added as Contract Section E.23.:
  - E.23. <u>Federal Employer Identification Number</u>. All references to FEIN, "43-0975002" shall be deleted and replaced with FEIN, "33-0884962."

The revisions set forth herein shall be effective 11/06/2008. All other terms and conditions not expressly amended herein shall remain in full force and effect.

IN WITNESS WHEREOF:

THE ACTIVE NETWORK, INC.:

Matt 13.71	11/18/08
CONTRACTOR SIGNATURE	/ DATE
Matt Landa, President	
PRINTED NAME AND TITLE OF CONTRACTOR SIGNAT	ORY (above)
TENNESSEE WILDLIFE RESOURCES AGENCY:	
Jan T Myers no	11/6/08
Gary T. Myers, Executive Director	DATE. /

APPROVED:

M. D. GOETZ, JR., COMMISSIONER
DEPARTMENT OF FINANCE AND ADMINISTRATION

DATE

## NOT APPLICABLE

DEBORAH E. STORY, COMMISSIONER DEPARTMENT OF HUMAN RESOURCES	DATE	
John Co Mora	12/18/08	
IOHN G MORGAN COMPTROLLER OF THE TREASURY	DATE /	

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		RFS-32	28.01	-301	•			FA-05-16159-03						
State A	gency						State Agency Division							
Tenne	ssee Wild	llife Resource	es Agei	ncy				<u> </u>		Technology, Caro		man, 615-7	'81-66G	39
Contra	ctor Nam	e						Contractive selfs the SAS	ctor	ID#(FEIN or SSN)	Printalisable della			
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boat re	Develop and administer the automated Remote Easy Access License (REAL) System to sell hunting and fishing licenses and boat registrations using point of sale technology at license agent sites, using telephone sales center, and using internet including fulfillment of the sale.													
Coi	ntract BE	GIN Date		Conti	ract END D	ate	Alatoria Section of the section of t	Subre	ecipi	ent or Vendor?	Maria Maria	M-MCFI	DA#	
277744766	1-Nov-	04		3	31-Oct-09				١	/endor		N	/A	
Mark E	ach TRUE	Statement		S I I S										
Х	Contrac	tor is on ST	ARS					Contrac	tor's	s Form W-9 is on f	ile in	Accounts		
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2007	\$	1,814,869.00										\$	1,81	4,869.00
2008	\$	1,814,869.00								-		\$	1,81	4,869.00
2009	\$	1,814,869.00			•							\$	1,814	4,869.00
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		CONTRACT SUMMARY SHEET SUPPLEMENT FA-05-16159-03												
Contract Num	ber:													
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			TOTAL				\$1,814,869.00							

		CONTRA	CTSUMN	IARY SHE	ET SUPPI	EMENT								
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Fiscal Year:		2009												
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			TOTAL				\$1,814,869.00							

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			TOTAL				\$604,960.00

#### AMENDMENT 3 TO FA-05-16159

This Contract Amendment is made and entered by and between the State of Tennessee, Tennessee Wildlife Resources Agency, hereinafter referred to as the "State" and Central Bank, hereinafter referred to as the "Contractor." It is mutually understood and agreed by and between said, undersigned contracting parties that the subject Contract is hereby amended as follows:

- 1. The text of Contract Section C.3.6 is deleted in its entirety and replaced with the following:
- C.3.6.1 Payment Methodology: Additional Agent Equipment Fee (In excess of 1100 Equipment Units). The Contractor shall be compensated based on the Additional Agent Equipment Fee in a total amount not to exceed the Contract Maximum Liability established in Section C.1. The Contractor shall be compensated based upon the following Unit Rate:

Service Unit	Rate	
One Additional Agent Equipment Fee	\$250.00	)

C.3.6.2 Payment Methodology: Additional Agent Equipment Fee – POS Printer Only. The Contractor shall be compensated based on the Additional Agent Equipment Fee – POS Printer Only in a total amount not to exceed the Contract Maximum Liability established in Section C.1. The Contractor shall be compensated based upon the following Unit Rate:

Service Unit		Rate
One Additional Agent Equipm	ent Fee - POS Printer Only	\$125.00

The revisions set forth herein shall be effective 11/01/2007. All other terms and conditions not expressly amended herein shall remain in full force and effect.

IN WITHESS WHEREOF:	
CENTRAL BANK:	
	00 18 -0
CONTRACTOR SIGNATURE	09.18.00 DATE
Robert C. Ramey, Vice President	DAIL
PRINTED NAME AND TITLE OF CONTRACTOR SIGNA	ATORY (above)
TENNESSEE WILDLIFE RESOURCES AGENCY:	
TENNESSEE WILDLIFE RESOURCES AGENCY:	
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Lang I Myen	10-4-07
Gary T. Myers, Executive Director	DATE
APPROVED:	
m.s. Grety. go. 1Ka	DEC A GROOT
	DEC 0 6 2007
M. D. GOETZ, JR., COMMISSIONER DEPARTMENT OF FINANCE AND ADMINISTRATION	DATE
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NOT APPLICABLE	
DEBORAH E. STORY, COMMISSIONER DEPARTMENT OF HUMAN RESOURCES	DATE
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Jan G. 1017	16 16 01
JOHN G. MORGAN, COMPTROL ER OF THE TREASUR	RY DATE

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### AMENDMENT 2 TO FA-05-16159

This Contract, by and between the State of Tennessee, Tennessee Wildlife Resources Agency, hereinafter referred to as the State, and Central Bank, hereinafter referred to as the Contractor, is hereby amended as follows:

Delete Section C.3.18 in its entirety and insert the following in its place:

C.3.18 Payment Methodology: One Completed Internet Quota Hunt Application Transaction Fee for Annual and Lifetime Sportsman License Holders. This fee will be applied as stated regardless of the number of hunt choices made by the Sportsman and regardless of the number of hunts the Sportsman requests to be awarded. The Contractor shall be compensated based on One Completed Internet Quota Hunt Application Transaction Fee for Annual and Lifetime Sportsman License Holders Transaction Fee in a total amount not to exceed the Contract Maximum Liability established in Section C.1. The Contractor shall be compensated based upon the following Unit Rate:

Service Unit				Rate	* \$4.0 \$74
One Completed Internet Quota Hunt	Application Transaction F	ee		\$1.00	;:
for Annual and Lifetime Sportsmen L	icense Holders		•		7.1 2.1

# IN WITNESS WHEREOF: CENTRAL BANK Robert C. Ramey, Vice President TENNESSEE WILDLIFE RESOURCES AGENCY Gary T. Myers, Executive Director APPROVED: DEPARTMENT OF FINANCE AND ADMINISTRATION: MAY 25 2006 M. D. Goetz, Jr., Commissioner Date DEPARTMENT OF PERSONNEL: Nat Johnson, Acting Commissioner Date COMPTROLLER OF THE TREASURY:

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		Contra	actor		Contractor Identification Number										
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2006/2007	\$1	,814,869.00						٠,				\$1,814,8	9.00		
2007/2008	\$1	,814,869.00									\$1,814,869.00				
2008/2009	\$1	,814,869.00								\$1,814,869.00					
2009/2010		\$604,960.00										\$604,90	00.00		
Total	\$8	,356,375.00										\$8,356,37	75.00		
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# AMENDMENT 1 TO FA-05-16159

This Contract, by and between the State of Tennessee, Tennessee Wildlife Resources Agency, hereinafter referred to as the State, and Central Bank, hereinafter referred to as the Contractor, is hereby amended as follows:

Delete Section C.1. in its entirety and insert the following in its place:

C.1. <u>Maximum Liability</u>. In no event shall the maximum liability of the State under this Contract exceed Eight Million, three hundred fifty six thousand, three hundred seventy five Dollars (\$8,356,375.00). The Service Rates in Section C.3 shall constitute the entire compensation due the Contractor for the Service and all of the Contractor's obligations hereunder regardless of the difficulty, materials or equipment required. The Service Rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with the Service Rates detailed in Section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

Add the following as Sections C.3.18 – C.3.20 and renumber any subsequent sections as necessary:

C.3.18 Payment Methodology: One Completed Internet Quota Hunt Application Transaction Fee for Annual and Lifetime Sportsman License Holders. This fee will be applied as stated regardless of the number of hunt choices made by the Sportsman and regardless of the number of hunts the Sportsman requests to be awarded. The Contractor shall be compensated based on One Completed Internet Quota Hunt Application Transaction Fee for Annual and Lifetime Sportsman License Holders Transaction Fee in a total amount not to exceed the Contract Maximum Liability established in Section C.1. The Contractor shall be compensated based upon the following Unit Rate:

Service Unit		Rate	
One Completed Internet Quota Hunt Application Transac	tion Fee	\$2.00	
for Annual and Lifetime Sportsmen License Holders			

C.3.19 Payment Methodology: One Completed Internet Quota Hunt Application Transaction Fee for Non Sportsman License Holders. This fee will be applied as stated regardless of the number of hunt choices made by the Customer. The Contractor shall be compensated based on One Completed Internet Quota Hunt Application Transaction Fee for Non Sportsman License Holders Transaction Fee in a total amount not to exceed the Contract Maximum Liability established in Section C.1. The Contractor shall be compensated based upon the following Unit Rate:

Service Unit	<u>Rațe</u>
One Completed Internet Quota Hunt Application Transaction Fee	\$2.00 plus \$0.50 for each
for Non Sportsman License Holders	requested hunt award

C.3.20 Payment Methodology: One Completed POS Quota Hunt Application Transaction Fee for Both Annual and Lifetime Sportsman and Non Sportsman License Holders. This fee will be applied as stated regardless of the number of hunt choices made by the Customer and regardless of the number of hunts the Customer requests to be awarded. The Contractor shall be compensated based on One Completed POS Quota Hunt Application Transaction Fee for Both Annual and Lifetime Sportsman and Non Sportsmen License Holders in a total amount not to exceed the Contract Maximum Liability established in Section C.1. The Contractor shall be compensated based upon the following Unit Rate:

Service Unit Rate
One Completed POS Quota Hunt Application Transaction Fee \$0.88
for Both Annual and Lifetime Sportsman and Non Sportsman License Holders

The other terms and conditions of this Contract not amended hereby shall remain in full force and effect.

IN WITNESS WHEREOF:		
CENTRAL BANK	\$120/05	
Philip D. Baker, Senior Vice President	Date /	
	*	
TENNESSEE WILDLIFE RESOURCES AGENCY		•
Jan J Myun Gary T. Myers, Executive Director	6/06/05 Date	•
Gary T. Myers, Executive Director	Date	
APPROVED:		• .
DEPARTMENT OF FINANCE AND ADMINISTRATION:	·	
	<i>j. J</i> .	
M. D. Goetz, Jr., Commissioner	6/8/05	
M. D. Goetz, Jr., Commissioner	Date'	
DEPARTMENT OF PERSONNEL:		
N/A Randy C. Camp, Commissioner		: 
Randy C. Camp, Commissioner	Date	
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GOVERNMENT OF MAIN WANTED AND AND AND AND AND AND AND AND AND AN		•
COMPTROLLER OF THE TREASURY:	·	
John G. Morgan	6/10/0,	· · · · · · · · · · · · · · · · · · ·
John G. Morgan, Comptroller of the Treasury	Date	

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State Agency: Tennessee Wildlife Resources Agency				Division		<u> </u>	on Systems Ma		,		
		Contra	actor				Con	itractor Iden	tification Num		9
Central Banl	k						43-0975	5002		EVEC	
					Service De	escription			MAR	1 9 2009	
Develop and administer the automated Remote Easy Access License (REAL) System to sell hunting and the head of the registrations using point of sale technology at license agent sites, using telephone sales center, and using the head including fulfillment of the sale.							at W				
		Contract B	egin Date					Contract	End Date		<del> </del>
November 1	, 2004					October				<del></del>	
Allotment C	ode	Cost Center	r Obj	ect Code	Fu	nd	. Gra	nt	Grant Code	Subgrant	Code
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FY	State	Funds	Federa	Funds		artmental ınds	Oth	er Funding		ontract Amo	nents)
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2005/2006	\$2,0	00.000,000								\$2,000,0	00.00
2006/2007	. \$2,0	00.000,000				- 25				\$2,000,0	
2007/2008	\$2,0	00.000,000					. '			\$2,000,0	
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CFDA#								· · ·	box ONLY if the		1
		State Fisca	I Contact		·	ļ			CIPIENT? (per		
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#### CONTRACT

# BETWEEN THE STATE OF TENNESSEE, TENNESSEE WILDLIFE RESOURCE AGENCY AND CENTRAL BANK

This Contract, by and between the State of Tennessee, Tennessee Wildlife Resource Agency, hereinafter referred to as the "State" and Central Bank, hereinafter referred to as the "Contractor," is for the provision of the services and equipment necessary to support the provision, implementation, and management of a Remote Easy Access License (R.E.A.L.) system. The contractor will need to provide, install, support, maintain, and operate the POS hardware, the communications network, and the software necessary to meet the requirements, as further defined in the "SCOPE OF SERVICES."

The Contractor is A FOR-PROFIT CORPORATION. The Contractor's address is:

238 Madison PO Box 779 Jefferson City, MO 65102

The Contractor's place of incorporation or organization is Missouri.

# A. SCOPE OF SERVICES:

- A.1. General Scope of the R.E.A.L. Project. The Contractor agrees to provide and implement a Remote Easy Access License (R.E.A.L.) system meeting all of the State's requirements, and to perform all services, in accordance with and as defined in the Request for Proposals for the Remote Easy Access License System, hereinafter referred to as the "RFP." and as defined in the other documents referenced in Section E.7., below.
- A.2. <u>R.E.A.L. Project Approach. Project Management. and Functional and Technical Requirements</u>. The Contractor shall manage the R.E.A.L. Project and develop a R.E.A.L. system in accordance with requirements stated in the following Attachments:

Attachment 6.7.A: Project Approach

Attachment 6.7.B: Project Management

Attachment 6.7.C: General Responsibilities

Attachment 6.7.D: Software Development

Attachment 6.7.E: System General Requirements

Attachment 6.7.F: System Specific Requirements

Attachment 6.7.G: Systems Operation And Support

Attachment 6.7.H: Telephone/Internet Fulfillment

Attachment 6.7.I: Inquiry Functions

Attachment 6.7.J: Reports Functions

Attachment 6.7.K: Receipts Processing

Attachment 6.7.L: License Agent Management And Support

Attachment 6.7.M: License Agent Training Requirements

Attachment 6.7.N: Pilot Project

Attachment 6.7.0: System Functional Requirements

- A.3. <u>Information Technology Methodology</u>. The Contractor will provide and implement R.E.A.L. using the State's Information Technology Methodology (ITM). The State has completed the first two ITM phases: "Scope and Feasibility" and "Requirements Definition & Solution Evaluation." The Contractor's portion of the R.E.A.L. project will begin with a transitional phase known as "Design Phase Kick-Off".
- A.4.a Project Management and Product Development Phase Milestones. The Contractor may provide a commercial off the shelf product. If the contractor chooses this option, then the project phase milestones will be Design Modifications (per user requirements), Construction of the System, Modifications, Testing and Acceptance, Implementation of Modified System, and Training.

If the Contractor chooses to develop an R.E.A.L. system, then the project phases shall be System Design, System Development, System Testing and Acceptance, Implementation and Training.

During each of the project phases, the Contractor will have the responsibilities and will produce the project deliverables set forth in Attachment 6.7.B: Project Management. The Contractor will manage the project, perform all required tasks, and produce project deliverables in accordance with the requirements stated in Attachment 6.7.B.

The State will not compensate the Contractor in association with completion of any of the phases. Compensation for all work will be in accordance with the Payment Methodology described in section C.3, below.

# B. CONTRACT TERM:

B.1. <u>Contract Term</u>. This Contract shall be effective for the period commencing on November 1, 2004 and ending on October 31, 2009. The State shall have no obligation for services rendered by the Contractor that are not performed within the specified period.

### C. PAYMENT TERMS AND CONDITIONS:

C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed Eight Million Dollars (\$8,000,000.00). The Service Rates in Section C.3 shall constitute the entire compensation due the Contractor for the Service and all of the Contractor's obligations hereunder regardless of the difficulty, materials or equipment required. The Service Rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with the Service Rates detailed in Section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

- C.2. <u>Compensation Firm</u>. The Service Rates and the Maximum Liability of the State under this Contract are firm for the duration of the Contract and are not subject to escalation for any reason unless amended.
- C.3 Payment Methodology The Contractor shall be compensated based on the Service Rates herein for units of service authorized by the State in a total amount not to exceed the Contract Maximum Liability established in Section C.1. The Units of Service described in Sections C.3.4 and C.3.5 are not subject to the limitation established by the Contract Maximum Liability. The Contractor's compensation shall be contingent upon the satisfactory completion of units of service. The Contractor shall be compensated based upon the following Service Rates:

	•		
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C.3.1	Payment Methodology: One Completed POS Privilege Transaction based on One Completed POS Privilege Transaction Fee in a total Liability established in Section C.1. The Contractor shall be compe	amount not to exceed the Co	ontract Maximum
	Service Unit	Rate	
	One Completed POS Privilege Transaction Fee	\$ .88	<del></del>
C.3.2	Payment Methodology: One Completed Administrative Privilege C be compensated based on One Completed Administrative Privilege to exceed the Contract Maximum Liability established in Section based upon the following Unit Rate:	Online Transaction Fee in a	total amount not
		_	•
	Service Unit One Completed Administrative Privilege Online Transaction Fee	Rate \$ 0	_
	One Completed Landing and Chine Completed and Complete Co		
C.3.3	Payment Methodology: One Completed Batched Record Update compensated based on One Completed Batched Record Update Trathe Contract Maximum Liability established in Section C.1. The Confollowing Unit Rate:	nsaction Fee in a total amou	int not to exceed
	Service Unit	Rate	•
•	One Completed Batched Record Update Transaction Fee	\$ 0	-
C.3.4	Payment Methodology: Telephone Fulfillment Agent Fee. The Co Telephone Fulfillment Agent Fee. The compensation shall be paid the hunter/fisherman/boater. The State shall not be liable for this based upon the following Unit Rate:	by the purchaser of the lice	nse or privilege,
	Service Unit	Rate	• ,
	One Completed Telephone Fulfillment Agent Fee	\$3.95	
C.3.5	Payment Methodology: Internet Fulfillment Agent Fee. The Con Internet Fulfillment Agent Fee. The compensation shall be paid by hunter/fisherman/boater. The State shall not be liable for this fee. upon the following Unit Rate:	the purchaser of the license	or privilege, the
*	Service Unit	Rate	
	One Completed Internet Fulfillment Agent Fee	\$3.25	· ` ` ` ` ` ` ` ` ` ` ` ` ` ` ` ` ` ` `
C.3.6	Payment Methodology: Additional Agent Equipment Fee (In excess shall be compensated based on the Additional Agent Equipment Fee Maximum Liability established in Section C.1. The Contractor shall Unit Rate.	in a total amount not to exce	ed the Contract
	Service Unit	Rate	
:	One Additional Agent Equipment Fee	\$250.00	
C.3.7	Payment Methodology: Change Order/Enhancement – Mainframe. on the Change Order/Enhancement – Mainframe Rate in a total (\$) of the Contract Maximum Liability established in Section based upon the following Hourly Rate:	amount not to exceed five	e percent (5%).
	Service Unit	Rate	
	Change Order/Enhancement Mainframe	\$75.00	

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	C.3.8	Payment Methodology: Change Order/Enhancement – POS. The Contractor shall be compensated based on the Change Order/Enhancement – POS Rate in a total amount not to exceed five percent (5%) (\$8,000,000.00) the Contract Maximum Liability established in Section C.1. The Contractor shall be compensated based upon the following Hourly Rate:	
		Service Unit Rate	
		Change Order/Enhancement POS \$75.00	
	C.3.9	Payment Methodology: One Program Module Download to One POS terminal. The Contractor shall be compensated based on the Download to a single POS machine a total amount not to exceed the Contract Maximum Liability established in Section C.1. The Contractor shall be compensated based upon the following Unit Rate:	
		Service Unit Rate One Program Module Download to POS terminal \$ 0	
		One Program woulde Download to POS terminar	
	C.3.10	Payment Methodology: Analyze, Develop, and Implement Exotic License Module Cost. The Contractor shall be compensated for the analysis, development, and implementation of the Exotic License Module a total amount not to exceed the Contract Maximum Liability established in Section C.1. The Contractor shall be compensated based upon the following Unit Rate:	·
		Service Unit Amount	
		Analyze, Develop, and Implement Exotic License Module Cost \$ 0	
	C.3.11	compensated for the analysis, development, and implementation of the Mussel Receipts Module a total amount not to exceed the Contract Maximum Liability established in Section C.1. The Contractor shall be compensated based upon the following Unit Rate:	
		Service Unit Amount Analyze, Develop, and Implement Mussel Receipts Module Cost \$ 0	
	C.3.12	Payment Methodology: One Completed Mussel Receipt Transaction Fee. The Contractor shall be compensated based on One Completed Mussel Receipt Transaction Fee in a total amount not to exceed the Contract Maximum Liability established in Section C.1. The Contractor shall be compensated based upon the following Unit Rate:	
		Service Unit Rate	
		One Completed Mussel Receipt Transaction Fee \$ 0	
	C.3.13	Payment Methodology: Analyze, Develop, and Implement Commercial Fishing Receipts Module Cost. The Contractor shall be compensated for the analysis, development, and implementation of the Commercial Fishing Receipts Module a total amount not to exceed the Contract Maximum Liability established in Section C.1. The Contractor shall be compensated based upon the following Unit Rate:	·
		Service Unit Amount	
		Analyze, Develop, and Implement Commercial Fishing Receipts Module Cost \$ 0	•
	C.3.14	Payment Methodology: One Completed Commercial Fishing Receipt Transaction Fee. The Contractor shall be compensated based on One Completed Commercial Fishing Receipt Transaction Fee in a total amount not to exceed the Contract Maximum Liability established in Section C.1. The Contractor shall be compensated based upon the following Unit Rate:	
		Service Unit Rate	
	•	One Completed Commercial Fishing Receipt Transaction Fee \$ 0	
	÷.		

C.3.15 Payment Methodology: One Completed Broadcast Message Fee. The Contractor shall be compensated based on One Completed Broadcast Message Fee in a total amount not to exceed the Contract Maximum Liability established in Section C.1. The Contractor shall be compensated based upon the following Unit Rate:

Service Unit	 	 <u> </u>	Rate	
One Completed Broadcast Message Fee			\$ 0	

C.3.16 Payment Methodology: One Completed Harvest Collection Transaction Fee. The Contractor shall be compensated based on One Completed Harvest Collection Transaction Fee in a total amount not to exceed the Contract Maximum Liability established in Section C.1. The Contractor shall be compensated based upon the following Unit Rate:

Service Unit		 Rate
One Completed Harvest Collec	ction Transaction Fee	 \$-0

- C.3.17 The State will begin transaction payments upon startup of the pilot project. The Contractor shall submit monthly invoices, in form and substance acceptable to the State with all of the necessary supporting documentation, prior to any payment. Such invoices shall be submitted for completed units of service for the amount stipulated.
- C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel, meals, or lodging.
- C.5. Payment of Invoice: The payment of the invoice by the State shall not prejudice the State's right to object to or question any invoice or matter in relation thereto. Such payment by the State shall neither be construed as acceptance of any part of the work or service provided nor as an approval of any of the amounts invoiced therein.
- C.6. <u>Invoice Reductions</u>. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the State, on the basis of audits conducted in accordance with the terms of this contract, not to constitute proper remuneration for compensable services.
- C.7. <u>Deductions</u>. The State reserves the right to deduct from amounts which are or shall become due and payable to the Contractor under this or any contract between the Contractor and the State of Tennessee any amounts which are or shall become due and payable to the State of Tennessee by the Contractor.
- C.8. Automatic Deposits. The Contractor shall complete and sign an "Authorization Agreement for Automatic Deposit (ACH Credits) Form." This form shall be provided to the Contractor by the State. Once this form has been completed and submitted to the State by the Contractor all payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee shall be made by Automated Clearing House (ACH). The Contractor shall not invoice the State for services until the Contractor has completed this form and submitted it to the State.

## D. STANDARD TERMS AND CONDITIONS:

- D.1. Required Approvals. The State is not bound by this Contract until it is approved by the appropriate State officials in accordance with applicable Tennessee State laws and regulations.
- D.2. <u>Modification and Amendment</u>. This Contract may be modified only by a written amendment executed by all parties hereto and approved by the appropriate Tennessee State officials in accordance with applicable Tennessee State laws and regulations.
- D.3. Termination for Convenience. The State may terminate this Contract without cause for any reason. Said termination shall not be deemed a Breach of Contract by the State. The State shall give the Contractor at least Ninety (90) days written notice before the effective termination date. The Contractor shall be entitled to receive compensation for satisfactory, authorized service completed as of the termination date, but in no event shall the State be liable to the Contractor for compensation for any service that has not been rendered. Upon such termination, the Contractor shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

- D.4. <u>Termination for Cause</u>. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor violates any terms of this Contract, the State shall have the right to immediately terminate the Contract and withhold payments in excess of fair compensation for completed services. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Contract by the Contractor.
- D.5. <u>Subcontracting</u>. The Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the State. If such subcontracts are approved by the State, they shall contain, at a minimum, sections of this Contract pertaining to "Conflicts of Interest" and "Nondiscrimination" (sections D.6. and D.7.). Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed.
- D.6. <u>Conflicts of Interest</u>. The Contractor warrants that no part of the total Contract Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed relative to this Contract.
- D.7. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.8. Records. The Contractor shall maintain documentation for all charges against the State under this Contract. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.9. <u>Monitoring</u>. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.10. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.11. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.
- D.12. <u>Independent Contractor</u>. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.
  - The Contractor, being an independent contractor and not an employee of the State, agrees to carry adequate public liability and other appropriate forms of insurance, including adequate public liability and other appropriate forms of insurance on the Contractor's employees, and to pay all applicable taxes incident to this Contract.
- D.13. State Liability. The State shall have no liability except as specifically provided in this Contract.

- D.14. <u>Force Majeure</u>. The obligations of the parties to this contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, acts of God, riots, wars, strikes, epidemics or any other similar cause.
- D.15. <u>State and Federal Compliance</u>. The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D.16. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Contractor agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Contract. The Contractor acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under *Tennessee Code Annotated*, Sections 9-8-101 through 9-8-407.
- D.17. <u>Completeness</u>. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.
- D.18. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.
- D.19. <u>Headings</u>. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

# E. SPECIAL TERMS AND CONDITIONS:

- E.1. <u>Conflicting Terms and Conditions</u>. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, these special terms and conditions shall control.
- E.2. <u>Communications and Contacts</u>. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by facsimile transmission, by overnight courier service, or by first class mail, postage prepaid, addressed to the respective party at the appropriate facsimile number or address as set forth below <u>or</u> to such other party, facsimile number, or address as may be hereafter specified by written notice. Note that each carrier uses a different delivery address.

The State:

### UPS

Carol Freeman
Chief, Information Systems Management
TWRA
Ellington Agricultural Center
440 Hogan Road
Nashville, TN 37220

### US Postal Service

Carol Freeman
Chief, Information Systems Management
TWRA
Ellington Agricultural Center
P. O. Box 40747
Nashville, TN 37204

### Fed Ex

Carol Freeman
Chief, Information Systems Management
TWRA
Ellington Agricultural Center
TWRA Building
Edmondson Pike
Nashville, TN 37211

Phone: 615-781-6639 Fax: 615-741-4606

Please note the TWRA delivery address for each of the above carriers, and make sure you have used the correct address for the carrier chosen to deliver any communication.

The Contractor:
Philip D. Baker, Senior Vice President
Central Bank
238 Madison
PO Box 779
Jefferson City, MO 65102

Telephone (573) 634-1208 Fax (573) 634-1210

All instructions, notices, consents, demands, or other communications shall be considered effectively given as of the day of delivery; as of the date specified for overnight courier service delivery; as of three (3) business days after the date of mailing; or on the day the facsimile transmission is received mechanically by the telefax machine at the receiving location and receipt is verbally confirmed by the sender if prior to 4:30 p.m. CST. Any communication by facsimile transmission shall also be sent by United States mail on the same date of the facsimile transmission.

- E.3. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate the Contract upon written notice to the Contractor. Said termination shall not be deemed a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. Should such an event occur, the Contractor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- E.4. <u>Breach</u>. A party shall be deemed to have breached the Contract if any of the following occurs:
  - I. failure to perform in accordance with any term or provision of the Contract;
  - II. partial performance of any term or provision of the Contract:
  - III. any act prohibited or restricted by the Contract, or
  - IV. violation of any warranty.

For purposes of this contract, these items shall hereinafter be referred to as a "Breach."

- a. Contractor Breach— The State shall notify Contractor in writing of a Breach.
  - (1) In event of a Breach by Contractor, the state shall have available the remedy of Actual Damages and any other remedy available at law or equity.
  - (2) Partial Default— In the event of a Breach, the State may declare a Partial Default. In which case, the State shall provide the Contractor written notice of: (1) the date that Contractor shall terminate providing the service associated with the Breach; and (2) the date the State will begin to provide the service associated with the Breach. Notwithstanding the foregoing, the State may revise the time periods contained in the notice written to the Contractor.

In the event the State declares a Partial Default, the State may withhold, together with any other damages associated with the Breach, from the amounts due the Contractor the greater of: (1) amounts which would be paid the Contractor to provide the defaulted service; or (2) the cost to the State of providing the defaulted service, whether said service is provided by the State or a third party. To determine the amount the Contractor is being paid for any particular service, the

Department shall be entitled to receive within five (5) days any requested material from Contractor. The State shall make the final and binding determination of said amount.

Upon Partial Default, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount. Contractor agrees to cooperate fully with the State in the event a Partial Default is taken.

- (3) Contract Termination— In the event of a Breach, the State may terminate the Contract immediately or in stages. The Contractor shall be notified of the termination in writing by the State. Said notice shall hereinafter be referred to as Termination Notice. The Termination Notice may specify either that the termination is to be effective immediately, on a date certain in the future, or that the Contractor shall cease operations under this Contract in stages. In the event of a termination, the State may withhold any amounts that may be due Contractor without waiver of any other remedy or damages available to the State at law or at equity. The Contractor shall be liable to the State for any and all damages incurred by the State and any and all expenses incurred by the State that exceed the amount the State would have paid Contractor under this Contract. Contractor agrees to cooperate with the State in the event of a Contract Termination or Partial Takeover.
- b. State Breach—In the event of a Breach of contract by the State, the Contractor shall notify the State in writing within 30 days of any Breach of contract by the State. Said notice shall contain a description of the Breach. Failure by the Contractor to provide said written notice shall operate as an absolute waiver by the Contractor of the State's Breach. In no event shall any Breach on the part of the State excuse the Contractor from full performance under this Contract. In the event of Breach by the State, the Contractor may avail itself of any remedy at law in the forum with appropriate jurisdiction; provided, however, failure by the Contractor to give the State written notice and opportunity to cure as described herein operates as a waiver of the State's Breach. Failure by the Contractor to file a claim before the appropriate forum in Tennessee with jurisdiction to hear such claim within one (1) year of the written notice of Breach shall operate as a waiver of said claim in its entirety. It is agreed by the parties this provision establishes a contractual period of limitations for any claim brought by the Contractor.
- E.5. <u>Performance Bond</u>. Upon approval of the Contract by all appropriate State officials in accordance with applicable State laws and regulations, the Contractor shall furnish, and maintain, a performance bond in the amount equal to Five Million Dollars (\$5,000,000), guaranteeing full and faithful performance of all undertakings and obligations under this Contract for the initial Contract term and all extensions thereof. The bond shall be in the manner and form prescribed by the State and must be issued through a company licensed to issue such a bond in the State of Tennessee.

The Contractor shall obtain the required performance bond in form and substance acceptable to the State and provide it to the State no later than 10/21/2004. Failure to provide the performance bond prior to the deadline as required shall result in contract termination. A copy of the current performance bond shall be provided to TWRA at any time upon request.

In lieu of a performance bond, a surety deposit, in the sum of Five Million Dollars (\$5,000,000.00), may be substituted if approved by the State prior to its submittal.

E.6. <u>Competitive Procurements</u>. This Contract provides for reimbursement of the cost of goods, materials, supplies, equipment, or services. Such procurements shall be made on a competitive basis, where practical.

- E.7. <u>Incorporation of Additional Documents</u>. Included in this Contract by reference are the following documents:
  - a. The Contract document and its attachments
  - b. All Clarifications and addenda made to the Contractor's Proposal
  - c. The Request for Proposal, it's attachments and its associated amendments
  - d. Technical Specifications provided to the Contractor
  - e. The Contractor's Proposal

In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these documents shall govern in order of precedence detailed above.

E.8. State Interest in Equipment—Uniform Commercial Code Security Agreement. The Contractor shall take legal title to all equipment and to all motor vehicles, hereinafter referred to as "equipment," purchased totally or in part with funds provided under this Contract, subject to the State's equitable interest therein, to the extent of its pro rata share, based upon the State's contribution to the purchase price. "Equipment" shall be defined as an article of nonexpendable, tangible, personal property having a useful life of more than one year and an acquisition cost which equals or exceeds \$5,000.00.

As authorized by the provisions of the terms of the Tennessee Uniform Commercial Code—Secured Transaction, found at Title 47, Chapter 9 of the Tennessee Code Annotated, and the provisions of the Tennessee Motor Vehicle Title and Registration Law, found at Title 55, Chapter 1 of the Tennessee Code Annotated, an intent of this Contract document and the parties hereto is to create and acknowledge a security interest in favor of the State in the equipment or motor vehicles acquired by the Contractor pursuant to the provisions of this Contract document. A further intent of this Contract document is to acknowledge and continue the security interest in favor of the State in the equipment or motor vehicles acquired by the Contractor pursuant to the provisions of this program's prior year Contracts between the State and the Contractor.

The Contractor hereto grants the State a security interest in said equipment. This agreement is intended to be a security agreement pursuant to the Uniform Commercial Code for any of the equipment herein specified which, under applicable law, may be subject to a security interest pursuant to the Uniform Commercial Code, and the Contractor hereby grants the State a security interest in said equipment. The Contractor agrees that the State may file this Contract or a reproduction thereof, in any appropriate office, as a financing statement for any of the equipment herein specified. Any reproduction of this or any other security agreement or financing statement shall be sufficient as a financing statement. In addition, the Contractor agrees to execute and deliver to the State, upon the State's request, any financing statements, as well as extensions, renewals, and amendments thereof, and reproduction of this Contract in such form as the State may require to perfect a security interest with respect to said equipment. The Contractor shall pay all costs of filing such financing statements and any extensions, renewals, amendments and releases thereof, and shall pay all reasonable costs and expenses of any record searches for financing statements the State may reasonably require. Without the prior written consent of the State, the Contractor shall not create or suffer to be created pursuant to the Uniform Commercial Code any other security interest in said equipment, including replacements and additions thereto. Upon the Contractor's breach of any covenant or agreement contained in this Contract, including the covenants to pay when due all sums secured by this Contract, the State shall have the remedies of a secured party under the Uniform Commercial Code and, at the State's option, may also invoke the remedies herein provided.

The Contractor agrees to be responsible for the accountability, maintenance, management, and inventory of all property purchased totally or in part with funds provided under this Contract. The Contractor shall maintain a perpetual inventory system for all equipment purchased with funds provided under this Contract and shall submit an inventory control report which must include, at a minimum, the following:

- a. Description of the equipment;
- b. Manufacturer's serial number or other identification number, when applicable;
- c. Consecutive inventory equipment tag identification;
- d. Acquisition date, cost, and check number;
- e. Percentage of state funds applied to the purchase;
- f Location within the Contractor's operations where the equipment is used:
- g. Condition of the property or disposition date if Contractor no longer has possession;

h. Depreciation method, if applicable; and i. Monthly depreciation amount, if applicable.

The Contractor shall tag equipment with an identification number which is cross referenced to the equipment item on the inventory control report. The Contractor shall inventory equipment annually. The Contractor must compare the results of the inventory with the inventory control report and investigate any differences. The Contractor must then adjust the inventory control report to reflect the results of the physical inventory and subsequent investigation.

The Contractor shall notify the State, in writing, of any equipment loss describing reason(s) for the loss. Should the equipment be destroyed, lost, or stolen, the Contractor shall be responsible to the State for the *pro rata* amount of the residual value at the time of loss based upon the State's original contribution to the purchase price.

The Contractor shall submit its inventory control report of all equipment purchased with the final invoice submitted under this Contract. This inventory control report shall contain, at a minimum, the requirements specified above for inventory control.

Upon termination of the Contract, where a further contractual relationship is not entered into, or at another time during the term of the Contract, the Contractor shall request written approval from the State for any proposed disposition of equipment purchased pursuant to this Contract. All equipment shall be disposed of in such a manner as parties may agree from among alternatives approved by Tennessee Department of General Services and in accordance with any applicable federal laws or regulations.

- E.9. Workpapers Subject to Review. The Contractor shall make all audit, accounting, or financial analysis workpapers, notes, and other documentation available for review by the Comptroller of the Treasury or his representatives, upon request, during normal working hours either while the analysis is in progress or subsequent to the completion of this Contract. The Contractor must provide to TWRA a Statement on Auditing Standards No. 70 (SAS 70) Reports on The Processing of Transactions by Service Organizations annually.
- E.10. Lobbving. The Contractor certifies, to the best of its knowledge and belief, that:
  - a. No federally appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, and entering into any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
  - b. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
  - c. The Contractor shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-grants, subcontracts, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients of federally appropriated funds shall certify and disclose accordingly.
- E.11. <u>Prohibited Advertising</u>. The Contractor shall not refer to this Contract or the Contractor's relationship with the State hereunder in commercial advertising in such a manner as to state or imply that the Contractor or the Contractor's services are endorsed.
- E.12. Confidentiality of Records. Strict standards of confidentiality of records shall be maintained in accordance with the law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State shall be regarded as confidential information in accordance with the provisions of State law and ethical standards and shall not be disclosed, and all necessary steps shall be taken by the Contractor to safeguard the confidentiality of such material or information in conformance with State law and ethical standards.

The Contractor will be deemed to have satisfied its obligations under this section by exercising the same level of care to preserve the confidentiality of the State's information as the Contractor exercises to protect its own confidential information so long as such standard of care does not violate the applicable provisions of the first paragraph of this section.

The Contractor's obligations under this section do not apply to information in the public domain; entering the public domain but not from a breach by the Contractor of this Contract; previously possessed by the Contractor without written obligations to the State to protect it; acquired by the Contractor without written restrictions against disclosure from a third party which, to the Contractor's knowledge, is free to disclose the information; independently developed by the Contractor without the use of the State's information; or, disclosed by the State to others without restrictions against disclosure.

It is expressly understood and agreed the obligations set forth in this section shall survive the termination of this Contract.

- E.13. Public Funding Notice. All notices, informational pamphlets, press releases, research reports, signs, and similar public notices prepared and released by the Contractor relative to this Contract shall include the statement, "This project is funded under an agreement with the State of Tennessee." Any such notices by the Contractor shall be approved by the State.
- E.14. Copyrights and Patents. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims or suits that may be brought against the State for infringement of any laws regarding patents or copyrights which may arise from the Contractor's performance of this Contract. In any such action brought against the State, the Contractor shall satisfy and indemnify the State for the amount of any final judgment for infringement. The Contractor further agrees it shall be liable for the reasonable fees of attorneys for the State in the event such service is necessitated to enforce the terms of this Contract or otherwise enforce the obligations of the Contractor to the State. The State shall give the Contractor written notice of any such claim or suit and full right and opportunity to conduct the Contractor's own defense thereof.
- E.15. <u>Public Accountability</u>. If this Contract involves the provision of services to citizens by the Contractor on behalf of the State, the Contractor agrees to establish a system through which recipients of services may present grievances about the operation of the service program, and the Contractor agrees to display a sign stating:

"NOTICE: This Contractor is a recipient of taxpayer funding. if you observe an employee engaging in any activity which you consider to be illegal or improper, please call the State Comptroller's toll free hotline: 1-800-232-5454"

Said sign shall be displayed in a prominent place, located near the passageway(s) through which the public passes to receive State funded services.

- E.16. <u>Date/Time Hold Harmless</u>. As required by *Tennessee Code Annotated*, Section 12-4-118, the contractor shall hold harmless and indemnify the State of Tennessee; its officers and employees; and any agency or political subdivision of the State for any breach of contract caused directly or indirectly by the failure of computer software or any device containing a computer processor to accurately or properly recognize, calculate, display, sort or otherwise process dates or times.
- E.17. Hold Harmless. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys for the State in the event such service is necessitated to enforce the terms of this Contract or otherwise enforce the obligations of the Contractor to the State.

In the event of any such suit or claim, the Contractor shall give the State immediate notice thereof and shall

provide all assistance required by the State in the State's defense. The State shall give the Contractor written notice of any such claim or suit, and the Contractor shall have full right and obligation to conduct the Contractor's own defense thereof. Nothing contained herein shall be deemed to accord to the Contractor, through its attorney(s), the right to represent the State of Tennessee in any legal matter, such rights being governed by Tennessee Code Annotated, Section 8-6-106.

- E.18. <u>Debarment and Suspension</u>. The Contractor certifies, to the best of its knowledge and belief, that it and its principals:
  - a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal or State department or agency;
  - b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offence in connection with obtaining attempting to obtain, or performing a public (Federal, State, or Local) transaction or grant under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
  - c. are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or Local) with commission of any of the offenses detailed in section b. of this certification; and
  - d. have not within a three (3) year period preceding this Contract had one or more public transactions (Federal, State, or Local) terminated for cause or default.

# E.19. Personnel-Related Provisions.

- a. The State reserves the right to evaluate all personnel proposed to perform services under this Contract. The Contractor shall provide, at the State's request and in a timely fashion, resumes, contact references, and/or any other supporting documentation necessary to allow the State to evaluate the individuals' qualifications.
- b. The State shall participate in the evaluation of service performance by Contractor's personnel. The Contractor agrees to remove and replace at the Contractor's expense, personnel judged as not making substantial contributions to the Projects to which Contractor's personnel are assigned. The Contractor agrees not to charge the State for services performed which the State designates as being unacceptable.
- c. The Contractor shall not solicit State employees in State facilities or during State work hours for the purpose of employment. State work hours are defined as 8:00 a.m. to 4:30 p.m., CT, Monday through Friday, including overtime.
- d. No official or employee of the State and no other public official of the State of Tennessee who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of this Contract shall, prior to the completion of this Contract, voluntarily acquire any personal interest, direct or indirect, in this Contract.
- e. The Contractor may not use individuals for the R.E.A.L. project who are employees of a State agency.
- E.20. Year 2000. Notwithstanding any provisions contained in the contract, the contractor warrants that each hardware, commercial or custom software, firmware, and middleware product delivered under this contract ("delivered item") shall be able to accurately process date/time data (including, but not limited to, displaying, calculating, comparing and sequencing) from, into, and between the twentieth and twenty-first centuries, including leap year calculations, when used in accordance with the product documentation provided by the contractor and subject to the following:

- I) In the case of hardware, commercial software, firmware, or middleware, the aforementioned warranty shall apply to the extent that information technology not provided pursuant to this contract, but used in combination with the delivered items, properly exchanges date/time data with it
- II) Notwithstanding the foregoing, in cases involving any development of new software or system(s) ("custom software"), the contractor further warrants that any contractor-provided data interfaces between delivered items and items or systems not provided pursuant to this contract shall accurately process date/time data, as defined above and further qualified by specific interface requirements; provided that the date/time data is accurate within the items or systems not provided.

In any case, if the contract requires that specific delivered items must perform as a system in accordance with the foregoing warranty, then that warranty shall apply to those delivered products as a system. Nothing in this warranty shall be construed to limit any rights or remedies the State may otherwise have under this contract with respect to defects other than year 2000 performance.

The remedies available to the State under this warranty shall include repair or replacement of any delivered product whose non-compliance is discovered and made known to the contractor in writing within the term of that delivered item's warranty, as expressed elsewhere in this agreement. The contractor shall proceed with repair or replacement immediately upon notification by the State of non-compliance, time being of the essence.

The State of Tennessee, at its sole option, may require the contractor, at any time, to demonstrate that procedures have been established to comply with all the obligations contained herein. This Section shall constitute the exclusive warranty regarding the Year 2000 and is in lieu of all other Year 2000 warranties, whether express or implied, including the implied warranties of merchantability and fitness for a particular purpose.

E.21. Ownership of Data. The State shall have all ownership right, title, and interest in all data products created for the State under this Contract. The State shall have royalty-free, exclusive, and unlimited rights to use, disclose, reproduce, and/or publish, for any purpose whatsoever, all said data. The Contractor shall have no right to sell or furnish to any third party, for any purpose whatsoever, any or all said data. The Contractor shall furnish such data upon request of the State, in accordance with the Contract and applicable State law.

IN WITNESS WHEREOF:		
CENTRAL BANK THE WALL DE CENTRAL BANK THE SECONDARY OF TH	9/29/04	
Philip D. Baker, Senior Vice President	Date	
TENNESSEE WILDLIFE RESOURCES AGENCY		
Down 7 my	9/24/04	
Gary T. Myers, Executive Director	/ Daté	
APPROVED:		
DEPARTMENT OF FINANCE AND ADMINISTRATION:		•
M.D. Motte Jr. IPW	OCT 13 2004	
M. D. Goetz, Jr., Commissioner	Date	
DEPARTMENT OF PERSONNEL:		
N/A		
Randy C. Camp, Commissioner	Date	
COMPTROLLER OF THE TREASURY:		
Clan G. Morgan	10/18/04	
John G. Morgan, Comptroller of the Treasury	Date	